IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO :9389 of 1998

Dated: 22.02.2007

Between:
Kantam Satyanarayana, S/o Gopalaswamy,
50 years, cultivation, R/o Pragadapalli,
Polavaram Mandal, West Godavari District.

..... PETITIONER

AND

1. The Director of Settlements, Government of A.P., Hyderabad.
2. The Agent to the Government, West Godavari District, Eluru.
3. The Special Deputy Collector (T.W)., Eluru, West Godavari.
4. The Mandal Revenue Officer, Polavaram, West Godavari District. .. RESPONDENTS

THE HON'BLE MR JUSTICE GOPALA KRISHNA TAMADA

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ORDER:

This writ petition is filed seeking quashing of the order of the 1st respondent-Director of Settlements, Hyderabad dated 06.05.1997 in AP.No.331/78(G2).

The case of the petitioner is that he is the absolute owner and possessor of the land to an extent of Ac.3.25 cents in R.S.No.342/4 and 342/1 of Pragadapalli village, Polavaram Mandal, West Godavari District. It is stated that the 3rd respondent-Special Deputy Collector (T.W), Eluru, rejected the claim of the petitioner over the land by order dated 12.03.1986 in S.R.No.337 of 1984 and ordered eviction from the land in question. Aggrieved by the said order, the petitioner filed an appeal being S.R.A.No.9 of 1986 before the 2nd respondent-Agent to the Government and the same was dismissed on 24.08.1987. Against the said order, the petitioner preferred an appeal being AP.No.331/78 (G-2) before the 1st respondent-Director of Settlements and the same was also dismissed. Hence, this writ petition.

A detailed counter-affidavit has been filed on behalf of the respondents.

Heard both sides.

Evidently the transactions had taken place during the year 1917 and 1926 and the A.P. Scheduled Areas Land Transfer Regulation I of 1970 came into force with effect from 03.02.1970. There is no specific provision in the Act or Regulation that it would apply to the past transactions also. Therefore, it cannot be said that the said transactions are hit by Section 3 (1) of the Regulation I of 1970. In fact, the same point came up for a debate before a Full Bench of this Court in GADDAM NARASA REDDY V. COLLECTOR, ADILABAD DISTRICT[1] and it had taken a view that Section 3 (1) of the Regulation I of 1959 and its amendments by Regulation II of 1963 and I of 1970 have no retrospective operation and do not affect transfers made prior to the said Regulation or its amendments coming into force and the authorities under Section 3 (2) of the Regulation have no jurisdiction to pass orders in relation to the immoveable property, covered by such transfers. Against the said judgment of the Full Bench, the Government approached the Apex Court by filing S.L.P. and the Supreme Court in the said judgment confirmed the judgment of the Full Bench of this Court and the same is reported in DEPUTY COLLECTOR V. S.VENKATA RAMANAIAH [2], wherein it is held as under:

> "A reading of Section 3(1) (a) indicates that after coming into force of the said provision any transfer of immovable property which is in the sweep of Section 3(1) (a) would be absolutely null and void unless the transfer falls within the excluded category as mentioned in the said provision. This Section nowhere indicates either expressly or even impliedly that it is meant to adversely affect completed transactions of transfer which might have taken place prior to the coming into force of Section 3(1) (a) of the Regulation. If Section 3(1) (a) was to apply retrospectively to hit even past transfers it would have mentioned with reference to transfer of immovable property as under:
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> "Whether effected before or after coming into operation of this Regulation."
>
> Such or similar words are conspicuously absent. Therefore, Section 3(1) (a) as it stands cannot be said to have any express retrospective effect. The provisions of Section 3(1) of the Regulation are purely prospective in nature and do not affect past transactions of transfers effected between tribals and non-tribals or between non-tribals and non-tribals themselves in the Agency Tracts at a time when neither Regulation 1 of 1959 nor Regulation II of 1963 or Regulation 1 of 1970 was in force. Such past transactions remained untouched by the sweep of the aforesaid subsequently enacted Regulations."

In the light of the aforesaid ratio laid down by a Full Bench of this Court as well as the Supreme Court, this Court has no hesitation to hold that the transactions occurred in the year 1917 and 1926 are not hit by Section 3 of the Regulation 1 of 1970. However, the petitioner has not agitated the said aspect before the Primary authority or subsequent authorities as can be seen from the orders passed by the authorities and for the first time the said aspect has been agitated before this Court drawing my attention to the judgments of a Full Bench of this Court as well as the Apex Court.

The writ petition is accordingly allowed and the orders passed by respondents 1 to 3 are hereby quashed. No costs.

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(GOPALA KRISHNA TAMADA, J)

22-02-2007
Gsn.

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[1] AIR 1982 A.P. 1.

[2] AIR 1996 S.C. 224